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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/049,368	05/09/2002	Harald Bruessow	112843-041	1115
29157 7	590 09/22/2004		EXAMINER	
BELL, BOYD & LLOYD LLC			WARE, DEBORAH K	
P. O. BOX 1135 CHICAGO, IL 60690-1135			ART UNIT	PAPER NUMBER
			1651	
			DATE MAILED: 09/22/2004	

Please find below and/or attached an Office communication concerning this application or proceeding.

## Disposition of Claims ### Claim(s)		Application No.	Applicant(s)				
Deborah K Ware Deborah K Ware Debor			BRUESSOW ET AL.				
- The MAILING DATE of this communication appears on the cover sheet with the correspondence address - Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Eathermoor of time may be availation under the previous 37 CFR 1.35(d), in no event, towever, may a reply be limity filled Eathermoor of time may be availation under the previous 37 CFR 1.35(d), in no event, towever, may a reply be limity filled Eathermoor of time may be availated under the previous 37 CFR 1.35(d), in no event, towever, may a reply be limity filled Eathermoor of the previous period above to less them has the grid of the correct towever, may a reply be limity filled If the period for reply is specified above to less them has the grid of the correct of them of th	Office Action Summary	Examiner	Art Unit				
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THE MALLING DATE OF THIS COMMUNICATION. Edemicians of time may be available under the provision of 3 CFR 1.13(6). In no event, however, may a reply be timely filed all of SX (6) MCNTHS from the mailing date of this communication. It no period for reply is specified above, the maximum statustry prior dwill reply and will depic 3 (6) MCNTHS from the mailing date of this communication. Failure to reply written in set or outeraide prior for reply will. by statute, cause the application to become ARANDONED (28 U.S. 2, 133). Any reply reviewed by the Cifful ent than these normals and the marking date of this communication. Period the mailing and the cifful and the communication. Period the mailing date of this communication, even if timely filed, may reduce any accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Status 1) Responsive to communication(s) filed on O1 July 2004. 2a) This action is FINAL. 2b) This action is ron-final. 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) Claim(s) 10-30 is/are pending in the application. 4a) Of the above claim(s) 10-20 and 26-30 is/are withdrawn from consideration. 5] Claim(s) 10-30 is/are pending in the application. 4a) Claim(s) 10-30 is/are pending in the application. 4a) Claim(s) 10-30 is/are pending in the application. 4b) Claim(s) 10-30 is/are pending in the application. Claim(s) 10-30 is/are pending in the application. 4a) Claim(s) 10-30 is/are pending in the application. 5] Claim(s) 10-30 is/are pending in the application. 6] Claim(s) 10-30 is/are pending in the application requirement. Application Papers 9) The specification is objected to by the Examiner. 10) The drawing(s) filed on is/are colored to restriction and/or election requirement. Application Papers 9) The drawing(s) filed on is/are colored to by the Examiner. 10) The drawing(s)							
1)	A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any						
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DETAILED ACTION

Claims 10-30 are pending.

Election/Restrictions

Applicant's election without traverse of Group III, claims 21-25, in the reply filed on July 1, 2004, is acknowledged.

Claims 10-20 and 26-30 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention(s), there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on July 1, 2004.

Claim Rejections - 35 USC § 102

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 21-25 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Brown et al.

Claims are drawn to a food composition comrpising Bifidobacterium strain such as Bifidobacterium longum in milk or ice cream, etc. The cfu (colony forming units) are in the range of 10 ¹¹ or less of the Bifidobacterium organisms.

Brown et al teach comrpising Bifidobacterium strain such as Bifidobacterium longum in milk or ice cream, etc. The cfu (colony forming units) are in the range of 10 ¹¹

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or less of the Bifidobacterium organisms. Note column 3, lines 40-47 and column 4, lines 50-60.

The claims appear to be identical to the disclosed subject matter and are therefore considered to be anticipated by the teachings therein.

All claims fail to be patentably distinguishable over the state of the art discussed above and cited on the enclosed PTO-892 and/or PTO-1449. Therefore, the claims are properly rejected.

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah K. Ware whose telephone number is 571-272-0924. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Wityshyn can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DEBORAHK WARE PATENT EXAMINER

Deborah K. Ware September 18, 2004